

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 30

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO CRIMINAL DEFENDANTS; AMENDING SECTION 18-211, IDAHO CODE, TO  
PROVIDE FOR CERTAIN NOTIFICATION AND FOR THE APPOINTMENT OR DESIGNATION  
OF AN EVALUATION COMMITTEE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-211, Idaho Code, be, and the same is hereby  
amended to read as follows:

18-211. EXAMINATION OF DEFENDANT -- APPOINTMENT OF PSYCHIATRISTS AND  
LICENSED PSYCHOLOGISTS -- HOSPITALIZATION -- REPORT. (1) Whenever there  
is reason to doubt the defendant's fitness to proceed as set forth in sec-  
tion 18-210, Idaho Code, the court shall appoint at least one (1) qualified  
psychiatrist or licensed psychologist or shall request the director of the  
department of health and welfare to designate at least one (1) qualified  
psychiatrist or licensed psychologist to examine and report upon the mental  
condition of the defendant to assist counsel with defense or understand the  
proceedings. The appointed examiner shall also evaluate whether the defen-  
dant lacks capacity to make informed decisions about treatment. The costs  
of examination shall be paid by the defendant if he is financially able. The  
determination of ability to pay shall be made in accordance with chapter 8,  
title 19, Idaho Code.

(2) Within three (3) days, excluding Saturdays, Sundays and legal hol-  
idays, of the appointment or designation, the examiner shall determine the  
best location for the examination. If practical, the examination shall be  
conducted locally on an outpatient basis.

(3) If the examiner determines that confinement is necessary for pur-  
poses of the examination, the court may order the defendant to be confined to  
a jail, a hospital, or other suitable facility for that purpose for a period  
not exceeding thirty (30) days. The order of confinement shall require the  
county sheriff to transport the defendant to and from the facility and shall  
notify the facility of any known medical, behavioral, or security require-  
ments of the defendant. The court, upon request, may make available to the  
examiner any court records relating to the defendant.

(4) In such examination, any method may be employed ~~which~~ that is ac-  
cepted by the examiner's profession for the examination of those alleged not  
to be competent to assist counsel in their defense.

(5) Upon completion of the examination, a report shall be submitted to  
the court and shall include the following:

(a) ~~a~~A description of the nature of the examination;

(b) ~~a~~A diagnosis or evaluation of the mental condition of the defen-  
dant;

(c) ~~a~~An opinion as to the defendant's capacity to understand the pro-  
ceedings against him and to assist in his own defense;

1 (d) ~~a~~An opinion whether the defendant lacks the capacity to make in-  
2 formed decisions about treatment. "Lack of capacity to make informed  
3 decisions about treatment" means the defendant's inability, by reason  
4 of his mental condition, to achieve a rudimentary understanding of the  
5 purpose, nature, and possible significant risks and benefits of treat-  
6 ment, after conscientious efforts at explanation.

7 (6) If the examination cannot be conducted by reason of the unwilling-  
8 ness of the defendant to participate therein, the report shall so state and  
9 shall include, if possible, an opinion as to whether such unwillingness of  
10 the defendant was the result of mental disease or defect.

11 (7) The report of the examination shall be filed in triplicate with the  
12 clerk of the court, who shall cause copies to be delivered to the prosecuting  
13 attorney and to counsel for the defendant.

14 (8) When the defendant wishes to be examined by an expert of his own  
15 choice, such examiner shall be permitted to have reasonable access to the de-  
16 fendant for the purpose of examination.

17 (9) In addition to the psychiatrist or licensed psychologist, the court  
18 may appoint additional experts to examine the defendant. In the event a  
19 defendant is suspected of being developmentally disabled, the examination  
20 shall proceed with those experts set out in subsection (7) of section 66-402,  
21 Idaho Code.

22 (10) If at any time during the examination process, the examiner has  
23 reason to believe that the defendant's alleged incompetency may be the  
24 result of a developmental disability and the matter has not already been re-  
25 ferred to an evaluation committee for review, the examiner shall immediately  
26 notify the court. The court shall then appoint an evaluation committee or  
27 shall order the department of health and welfare to designate, within two (2)  
28 business days, an evaluation committee consistent with section 66-402(7),  
29 Idaho Code.

30 (11) If the defendant lacks capacity to make informed decisions about  
31 treatment, as defined in section 66-317, Idaho Code, the court may authorize  
32 consent to be given pursuant to section 66-322, Idaho Code. If the defen-  
33 dant lacks capacity to make informed decisions as defined in subsection (9)  
34 of section 66-402, Idaho Code, the court may authorize consent to be given  
35 pursuant to sections 66-404 and 66-405, Idaho Code.

36 (1~~1~~2) If the defendant was confined solely for the purpose of examina-  
37 tion, he shall be released from the facility within three (3) days, excluding  
38 Saturdays, Sundays and legal holidays, following notification of completion  
39 of the examination.